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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/624,774	07/22/2003	Christian Luetkemeyer	13455US03	6779

23446 7590 10/06/2004

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CHICAGO, IL 60661

EXAMINER

BAKER, STEPHEN M

ART UNIT	PAPER NUMBER
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2133

DATE MAILED: 10/06/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

**Office Action Summary**

Application No.

10/624,774

Applicant(s)

LUETKEMEYER, CHRISTIAN

Examiner

Stephen M. Baker

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-42 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-42 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date. \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### *Double Patenting*

1. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and, *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

2. Claims 1-42 are rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-35 of U.S. Patent No.

6,498,205. Although the conflicting claims are not identical, they are not patentably distinct from each other because: present claims 1-42 merely claim the same subject matter as recited by claims 1-35 of the patent, in a re-hashed form. Present claims 1, 2 and 9 in combination correspond to claim 1 of the patent, present claims 5-8 respectively corresponds to claims 3-6 of the patent, present claim 10 corresponds to claim 8 of the patent, present claims 11-13 and 19 in combination correspond to claim 9 of the patent, present claim 14 corresponds to claim 10 of the patent, present claim 15 corresponds to claim 13 of the patent, present claim 16 corresponds to claim 14 of the patent, present claim 17 corresponds to claim 11 of the patent, present claim 18

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corresponds to claim 12 of the patent, present claims 20 and 21 in combination correspond to claim 15 of the patent, present claim 22 corresponds to claim 17 of the patent, present claim 23 corresponds to claim 19 of the patent, present claim 24 corresponds to claim 20 of the patent, present claim 25 corresponds to claim 24 of the patent, present claim 26 corresponds to claim 25 of the patent, present claim 27 corresponds to claim 22 of the patent, present claim 28 corresponds to claim 23 of the patent, present claim 29 corresponds to claim 25 of the patent, present claim 30 corresponds to claim 26 of the patent, present claims 31-33 respectively correspond to claims 29-31 of the patent, present claim 34 corresponds to claim 27 of the patent, present claim 35 corresponds to claim 28 of the patent, present claims 36 and 39 in combination correspond to claim 32 of the patent, present claim 40 corresponds to claim 33 of the patent, present claim 41 corresponds to claim 34 of the patent, present claims 37 and 38 correspond to the method carried out by the apparatus of claims 15 and 22 in combination, with a "most likely symbol" self-evidently being a "potential symbol", present claim 42 corresponds to claim 35 of the patent.

### ***Conclusion***

3. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

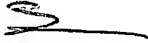
Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen M. Baker whose telephone number is (703)

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305-9681. The examiner can normally be reached on Monday-Friday (11:00 AM - 7:30 PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Albert DeCady can be reached on (703) 305-9595. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

  
Stephen M. Baker  
Primary Examiner  
Art Unit 2133

smb